U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-S-

DATE: SEPT. 20, 2016

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

PETITION: FORM I-526, IMMIGRANT PETITION BY ALIEN ENTREPRENEUR

The Petitioner seeks classification as an immigrant investor pursuant to the Immigration and Nationality Act (the Act) section 203(b)(5), 8 U.S.C. § 1153(b)(5). This fifth preference classification makes immigrant visas available to foreign nationals who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.

The Chief of the Immigrant Investor Program Office denied the petition. The Chief concluded that the Petitioner did not show he invested or was actively in the process of investing his own capital in the new commercial enterprise (NCE). Specifically, the Chief found that the Petitioner did not document his ownership of a real estate property he used to secure a $500,000 loan, the proceeds of which he stated he invested in the NCE.

The matter is now before us on appeal. In support of his appeal, the Petitioner submits a brief, additional documentation, and maintains that the Chief erred in finding he did not invest his own capital in the NCE. He states that the evidence he offers on appeal establishes his ownership of the real estate property he used to secure the $500,000 loan.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

A foreign national may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in a new commercial enterprise. The foreign national must show that the investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. Specifically, section 203(b)(5)(A) of the Act provides that a foreign national may seek to enter the United States for the purpose of engaging in a new commercial enterprise:

> (i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and

> (ii) which will benefit the United States economy and create full time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

The implementing regulation at 8 C.F.R. § 204.6(e) defines "capital" and "investment" and states:

> *Capital* means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. All capital shall be valued at fair market value in United States dollars. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section 203(b)(5) of the Act.
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> . . . .
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> *Invest* means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

II. ANALYSIS

The Petitioner maintains that he has invested at least $500,000[1] in the NCE, a limited partnership that sells used cars, and offers car repair and body work services. The business plan indicated that upon the Petitioner's investment of $500,000, he will become a limited partner, owning 30 percent of the partnership, while the general partner will retain 70 percent of the business. The business plan provided conflicting information on the identity of the general partner. On page 4, it stated that [redacted] is the general partner.[2] But on page 7, it identified [redacted] as the NCE's general partner.

The Petitioner maintains that his investment funds derived from a $500,000 loan extended by [redacted] A September 16, 2013, Promissory Note listed a real estate property located in [redacted] Georgia, as collateral for the loan. According to a document entitled "EB-5 Equity Investment Support," the Petitioner would deposit $100,000 in the NCE's account on May 30, 2013, and "within 3-days of receiving approval of the [petition, he will deposit] the balance of $400,000." This paper

[1] As the NCE is located in a targeted employment area (TEA), the required amount of capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(e).

[2] According to [redacted] Operating Agreement, [redacted] and [redacted] each owns 50 percent of [redacted]

further noted that the source of the loan proceeds "derived from [redacted] personal income earned from his salary wage income earned as Finance Manager at an auto dealership."

A. Investment Capital

The regulatory definition of "capital" includes indebtedness, as well as cash. In *Matter of Soffici*, 22 I&N Dec. 158, 162 (Assoc. Comm'r 1998), we stated that "indebtedness," namely proceeds from a third-party bank loan, "that is secured by assets of the enterprise is specifically precluded from the definition of 'capital.'" *Soffici* thus illustrates that when a petitioner's capital is derived from proceeds of a third-party loan, his financial contribution of those funds constitutes an investment of indebtedness, not cash, and he must therefore show that his personal asserts sufficiently secure the loan. *Id.* In this case, the Petitioner has invested indebtedness rather than cash. Consequently, he must demonstrate that his personal assets sufficiently secure the third-party loan to meet the regulatory definition of "capital." *See* 8 C.F.R. § 204.6(e).

As the Petitioner has invested indebtedness in the NCE, he must not only show that the indebtedness is secured by his own assets, but that he is personally and primarily liable for the indebtedness, and the NCE's assets are not used to secure the indebtedness. *See* 8 C.F.R. § 204.6(e); *Soffici*, 22 I&N Dec. at 162. The Petitioner does not challenge this issue on appeal. Instead, he states that he has sufficiently secured the loan with his own assets, namely, a real estate property located in [redacted] Georgia.

However, the Petitioner has not shown that he owns the real estate property that secures the $500,000 loan he obtained from [redacted] On appeal, he submits for the first time a foreign language document and its translation entitled "Extract from the Public Register." The translation lacks a certification in compliance with 8 C.F.R. § 103.2(b)(3), which provides: "[a]ny document containing foreign language submitted to USCIS [U.S. Citizenship and Immigration Services] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." While the Petitioner has offered a three-page foreign language document, the English translation consists of only one page. Also, the foreign language document includes multiple numerical series that do not appear in the translation. The Petitioner thus has not demonstrated that the foreign language document or its translation entitled "Extract from Public Register" is reliable or that either is sufficient to prove his ownership of the real estate property. Because the Petitioner did not submit certified translations in accordance with the regulation, we cannot determine whether the evidence supports the Petitioner's claims.

Even if we were to consider the uncertified translation, the Petitioner had not shown that the "Extract from Public Register" relates to the collateral listed in the promissory note. The promissory note provided that the loan security "consists of 5 acres with [a] residential house." According to an online source, five acres are approximately 20,234 square meters or 0.0078 square miles.[3] The

[3] *See* http://www.metric-conversions.org/area/acres-to-square-meters-table.htm and http://www.metric-

"Extract from Public Register," however, referenced an "Agricultural" plot of "741.00 sq. m." Also, the promissory note indicated that the real estate property's address is "House #6 on [redacted] in the [redacted] Georgia." The extract discussed a property at '[redacted] Based on the differences in the property size, use, and address, the "Extract from Public Register" does not establish the Petitioner's ownership of the collateral listed in the promissory note.

On appeal, the Petitioner submits a December 30, 2015, letter from [redacted] an attorney in [redacted] Georgia, to clarify the Petitioner's ownership interest in the property located at '[redacted] turn, [redacted] As discussed above, the promissory note indicated property at a different address. Assuming the property referenced in [redacted] letter is the same as the one mentioned in the "Extract from Public Register," as explained above, the Petitioner has not established that the extract relates to the loan collateral because of the differing information on property size, use, and address.

Furthermore, the Petitioner has submitted conflicting information on who owns the real estate property. According to an October 17, 2015, letter from [redacted] a member of [redacted] the Petitioner is "the sole owner of the property" and has "100 percent equity in the property." The letter further stated that the Petitioner became "the owner [of the property] on the day he was born on XXX [*sic*] as the Petitioner's father gave [the] Petitioner the house as was the tradition in the family and the country's culture." The uncertified translation of the "Extract from Public Register" listed the Petitioner as the "Proprietor" of the property, and did not reference other owners.

[redacted] however, offered conflicting ownership information. Specifically, she indicated that she reviewed an "Ownership Certificate . . . , obtained from the National Public Registry," and it showed that the Petitioner is one of three individuals who own the property in [redacted] Georgia. She identified the owners as the Petitioner and two of his siblings, who took ownership of the property when their father passed away. The Petitioner has provided inconsistent documentation on how many people own the property, as well as when and how he acquired the property. "[I]t is incumbent upon [the Petitioner] to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the petitioner has presented insufficient evidence to explain or reconcile the inconsistent documentation. As such, he has not established by a preponderance of the evidence that he owns the real estate property that secured the promissory note.

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conversions.org/area/acres-to-square-miles-table.htm, accessed on June 2, 2016, and incorporated into the record of proceedings.

[4] [redacted] noted in his letter that he is also a managing member of South Texas EB-5 Regional Center, LLC. The record does not indicate that the NCE, or its project, is associated with a USCIS-designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610.

Moreover, the petitioner has not shown that the value of the collateral is at least $500,000. In other words, he has not established that the property sufficiently secures the $500,000 loan from [redacted] The Petitioner submitted a foreign language document entitled "Audit Evaluation of Immovable Property." Similar to the "Extract from the Public Register," the English translation lacks a certification that meets the requirements under 8 C.F.R. § 103.2(b)(3). Without the certification, the Petitioner has not demonstrated that the translation is either complete or accurate. Also, while the Petitioner filed three pages of foreign language material, the English translation consists of one page. As the record lacks a certified translation, the Petitioner has not established the information in the "Audit Evaluation of Immovable Property," including the appraised value of the property, is credible or reliable.

Finally, the Petitioner has not shown that the security interest in a real estate property located outside of the United States has any value in the United States. The petitioner in *Matter of Izummi*, 22 I&N Dec. 169, 170 (Assoc. Comm'r 1998), listed his Japanese bank accounts as collateral in a promissory note. *Izummi* observed that "the petitioner has not demonstrated how [a lender] could reach the funds in the overseas accounts if the petitioner were to default, and it is not clear what expenses and effort would be involved." *Id. Izummi* concluded:

> In the absence of such information, and in the absence of any details regarding the laws of Japan and the enforceability, by U.S. entities, of security interests taken in Japanese bank accounts, the petitioner has failed to establish that the security interest in the foreign accounts has any value.

Id. Similarly, in this case, the Petitioner has not offered evidence relating to if, or how, [redacted] could take possession of the real estate property located in [redacted] Georgia, if the Petitioner defaulted. Without such information, the Petitioner has not demonstrated that the security interest in the real estate property has any value in a loan that involves a United States-based lender.

As the Petitioner's investment capital derived from a third-party loan, he has invested indebtedness, which must be sufficiently secured with his own assets to qualify as "capital." He, however, has not demonstrated that his personal assets secured or sufficiently secured the indebtedness. Accordingly, the loan proceeds do not constitute "capital" under 8 C.F.R. § 204.6(e), and the Petitioner has not shown by a preponderance of the evidence that he has invested or is actively in the process of investing at least $500,000 of his own funds in the NCE.

B. Employment Creation

The Petitioner has not shown that the NCE has met or will meet the employment creation requirements. While part 5 of the petition provided that the Petitioner's investment has already created five new jobs, the record does not demonstrate that the NCE has created any full-time position. As the NCE has not yet created at least 10 full-time positions for qualifying employees, the Petitioner must submit a comprehensive business plan establishing the NCE's need for not fewer

than 10 new qualifying full-time employees. *See* 8 C.F.R. § 204.6(j)(4)(i)(B). *Matter of Ho*, 22 I&N Dec. 206, 212-13 (Assoc. Comm'r 1998), discusses information that should be included in a comprehensive business plan, emphasizing that "the business plan must be credible."

The Petitioner presented a business plan that lacked detailed information on positions that the NCE aimed to create. Specifically, it did not include "job descriptions for all positions." *See Ho*, 22 I&N Dec. at 213. In addition, although the business plan listed and the as the NCE's "closest, similar competitors," it did not examine "their relative strengths and weaknesses, [or offer] a comparison of the competition's products and pricing structures . . . ." *Id.* As discussed in *Ho*, to be "'comprehensive,' a business plan must be sufficiently detailed to permit [us] to draw reasonable inferences about the job-creation potential." *Id.* at 212-13.

Moreover, the business plan included conflicting information. For example, page 4 stated that is the NCE's general partner, while page 7 identified as the general partner. Page 4 of the business plan indicated that upon the Petitioner's investment, will retain 70 percent of the NCE's interest, and the Petitioner will own 30 percent. According to page 14 of the NCE's Limited Partnership Agreement, however, not will have 70 percent of the NCE's interest. Page 6 of the business plan noted that the general partner contributed $10,000 in the NCE. But page 14 of the Limited Partnership Agreement listed the general partner's contribution as $1,075,500. The inconsistent ownership information casts doubt on the credibility of the business plan, and the Petitioner's statement that the NCE will create at least 10 full-time positions as a result of his $500,000 investment. *See Ho*, 19 I&N Dec. at 591 ("Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.")

Finally, the business plan indicated that 3 of the 10 full-time positions that the NCE plans to create are jobs that contractors hold. As the three employees will occupy the same positions that the contractors currently hold, the Petitioner has not shown that his investment will lead to the creation of these jobs. *See* 8 C.F.R. § 204.6(j)(4). Accordingly, the Petitioner has not established by a preponderance of the evidence that the NCE has met or will meet the employment creation requirements. Specifically, the Petitioner has not submitted a business plan that is comprehensive, or that credibly demonstrates that his $500,000 investment will create, or that the NCE will need, no fewer than 10 new full-time positions. *See* 8 C.F.R. § 204.6(j)(4)(i)(B).

C. Lawful Source of Funds

The Petitioner has not verified the lawful source of his funds. The regulation at 8 C.F.R. § 204.6(j) and (e) provides that a petitioner must show his or her capital is lawfully obtained, and that assets "acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital" under the Act. A petitioner cannot demonstrate the lawful source of funds by submitting only bank letters or statements that confirm the deposit of funds. *Ho*, 22 I&N Dec. at

210-11; *Izummi*, 22 I&N Dec. at 195. Without documentation of the complete path of the funds, a petitioner cannot meet his or her burden of establishing that the funds are his or her own. *Izummi*, 22 I&N Dec. at 195.

The Petitioner indicated that he invested $100,000 in the NCE on May 30, 2013. The NCE's bank account ending in showed a $100,000 deposit. The record, however, does not establish the source of these funds, or if they were transmitted by the Petitioner to the NCE. The Petitioner then presented two October 10, 2015, checks, payable to the NCE in the amounts of $360,000 and $128,000, totaling $488,000. He, however, has not offered bank statements verifying that the NCE actually deposited the two checks in the NCE's account. Although an October 15, 2015, the NCE's account showed a Deposit Account Balance Summary of $501,198.88, the summary did not include details on any transactions, or show that at least $500,000 came from the Petitioner. Moreover, the Petitioner has not demonstrated the source of the $488,000.

The Petitioner submitted bank statements for accounts ending in and showing two October 10, 2015, withdrawals for $215,120.39 and $144,880.61, totaling $360,001. The Petitioner indicated that these funds belonged to who extended him a $500,000 loan. The Petitioner, however, has not established that lawfully accumulated sufficient funds to lend to him to invest in the NCE. The Petitioner states that loaned him $100,000 in 2013 and $488,000 in 2015. An undated "EB-5 Equity Investment Support" provided that earned $643,271.10 between 2004 and 2008. While the Petitioner presented tax records to substantiate this amount, he has not offered evidence showing that retained at least $100,000 in 2013, and at least $400,000 in 2015. The record also lacks information on expenses between 2004 and 2015 that would have affected his reported earnings. Without additional corroboration, the Petitioner has not illustrated that had $500,000 personal assets to lend to the Petitioner to invest in the NCE.

In addition, the bank record for accounts ending in and showed that the Petitioner received funds from ' not ' The business plan, starting from page 3, referenced the NCE as ' ' An April 8, 2013, letter from the Internal Revenue Service (IRS) noted that the NCE and are the same entity. In addition, business address, as listed in the bank statements, is the same as the NCE's address. The record lacks evidence tracing the Petitioner's investment funds to personal earnings or personal financial account. Rather, it appears that the Petitioner's capital, at least $360,001 of it, came from the NCE.

The Petitioner has not established the source of the $100,000 deposited into the NCE's account on May 30, 2013. Similarly, he has not demonstrated the source of the two October 10, 2015, checks, totaling $488,000, or that the NCE actually deposited the funds into its account. As noted, without documentation of the complete path of the funds, the Petitioner has not shown by a preponderance of the evidence the lawful source of his capital. *See Izummi*, 22 I&N Dec. at 195.

D. Summary

For the reasons discussed above, the Petitioner has not shown his personal assets secure or sufficiently secure the $500,000 loan he indicated he obtained from [redacted] Without adequately securing the loan with his own assets, he has not established that he has placed a sufficient amount of his capital at risk. In addition, he has not demonstrated that the NCE meets or will meet the employment creation requirements upon receiving his $500,000 investment. Finally, he has not documented the lawful source of the funds that he claimed to have remitted to the NCE.

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that he is eligible for the immigrant investor classification. We will dismiss this appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision. The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of V-S-*, ID# 18086 (AAO Sept. 20, 2016)